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one seeking to recover them back to show that the payment was not voluntary.

[Ed. Note.—For cases in point, see vol. 45, Cent. Dig. Taxation, § 1013.]

5. Same—Voluntary Payments—Payment under Protest.—A mere declaration of a taxpayer, indorsed on the stub of the official's tax-book, that payment was made under protest, does not show that the payment was not made voluntarily, in the absence of any proof of pressure to make payment being brought to bear on the taxpayer.

[Ed. Note.—For cases in point, see vol. 45, Cent. Dig. Taxation, §§ 1003-1005.]

WILSON et al. v. LANGHORNE et al.

March 1, 1906.

[52 S. E. 841.]

1. Assignments for Benefit of Creditors—Rights of Assignees—Commissions.—Where the premises conveyed by an assignment for the benefit of creditors are sold by a commissioner appointed by the court in partition proceedings, and not by the trustee named in the deed of assignment, the trustee is not entitled to commissions upon the fund realized by the sale under a clause of the deed entitling him to commissions for the sale of the property by him.

2. Same—Right to Employ Counsel.—Where the creditors interested in an assignment made by their debtor were sui juris and were brought before the court in a suit to partition the assigned property, and the trustee in the assignment, while made a formal party on the ground of his ownership of the legal title, had no real interest in the suit, and the property was sold by a commissioner of the court, and the funds were paid into court by him, so that the trustee was not even entitled to commissions, the trustee could not bind the creditors otherwise represented by counsel of their own choosing by a contract employing counsel to conduct an appeal.

ARAGON COFFEE CO. v. ROGERS.

March 1, 1906.

[52 S. E. 843.]

1. Bills and Notes—Bona Fide Purchasers—Purchasers from Bona Fide Purchasers.—A purchaser of a note from a bona fide purchaser is entitled to stand in the place of the latter in enforcing the note, although he himself has notice of equities existing between the original parties.

[Ed. Note.—For cases in point, see vol. 7, Cent. Dig. Bills and Notes, §§ 937-943.]

2. Same—Repurchase by Payee.—Where the payee of a note, after

selling the same to a bona fide purchaser, repurchases it, he does not thereby acquire any better right against the maker than he possessed in the first instance.

3. Evidence—Presumptions—Refusal to Testify.—Where alleged facts are necessarily in the possession of a party, and he, when called as a witness, persistently and without any apparent reason refuses to disclose them, it may be presumed that such facts do not exist.

[Ed. Note.—For cases in point, see vol. 20, Cent. Dig. Evidence, §§ 95-100.]

4. Bills and Notes—Bona Fide Purchasers—Questions for Jury.—The question of whether a purchase of a note from a bona fide purchaser was made in good faith, or was made as agent for the payee in order to defeat a defense of the maker as against the payee, was for the jury, where the purchase was made four months after the maturity of the note, with the knowledge that it involved a lawsuit and was made at the suggestion of a principal stockholder of the payee, who was closely related to the purchaser, where it involved the disposition of securities by the purchaser, and where the latter, on being put on the witness stand, persistently refused to explain why he made the purchase.

HATTON *v.* MOUNTFORD et ux.

March 1, 1906.

[52 S. E. 847.]

1. Master and Servant—Contracts of Employment—Duties of Servant.—Where there is no express contract between an employer and an employee, imposing upon the latter a higher degree of skill and diligence in the discharge of his duties, only the ordinary and reasonable skill and diligence which is implied by law can be required of him, but, if he contracts for a higher degree of skill and diligence than the law implies, he must perform his duties with the skill for which he contracts, and cannot excuse himself for failing to do so by showing that he performed the duties of his position with the ordinary degree of skill and diligence required by law.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, § 67.]

2. Same.—A contract employing a music teacher which required the teacher to be loyal in the management of the school, to put forth his best efforts for the advancement of the music department, to unite in building up the institution, and to assist in maintaining discipline, required the teacher to give a higher degree and grade of service than is implied by law in the ordinary contract between master and servant.

3. Same—Discharge of Servant—Actions—Instructions.—A contract by which defendant employed plaintiff as a music teacher required the latter to aid in building up the school, to assist in main-